

Remarks

This Application has been carefully reviewed in light of the Office Action (“Office Action”) mailed electronically on September 12, 2008. Applicant appreciates the Examiner’s consideration of the Application. Claims 1-24 remain pending. Applicant respectfully requests reconsideration and allowance of all pending claims.

Claim Objections

The Office Action objects to Claims 1, 7, 13, and 19 because of alleged informalities. More specifically, the Office Action objects to the use of the phrases such as “method for,” “system for,” and “code for.” Additionally, the Office Action objects to the use of the phrase “being operable to” in Claim 19. However, the Office Action provides no support in case law or statutes to suggest that use of these phrases is an appropriate ground for objection. Applicant respectfully contends that use of these phrases is proper. Furthermore, an informal search of the USPTO’s website returns over 1.3 million issued patents with claims reciting the phrase “method for,” over 725,000 issued patents with claims reciting the phrase “system for,” over 95,000 issued patents with claims reciting the phrase “code for,” and over 150,000 issued patents with claims reciting the phrases “operable to” or “being operable to.” In short, use of the phrases “method for,” “system for,” “code for,” and “operable to” in claims is a practice that is both well accepted and currently supported by the PTO. To the extent that the Examiner intends to maintain this objection, Applicant respectfully requests the Examiner to provide support from applicable authority, such as case law or statutes.

Rejections under 35 U.S.C. § 101

The Office Action rejects Claim 7 under 35 U.S.C. § 101, stating that the claimed invention is directed to non-statutory subject matter. Specifically, the Office Action alleges that, “Claim 7 recites ‘a system for maintaining computer security’ comprising ‘means for’ however, it appears that the ‘means for’ do not comprise hardware and are merely computer software modules, thereby invoking 35 U.S.C. 101.” *Office Action*, pg. 2. Applicant respectfully contends that the means-plus-function format of Claim 7 is entirely proper according to Federal Circuit case law. *See e.g., Medical Instrumentation and Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1216 (Fed. Cir. 2003) (“This portion of the specification

clearly links software to the claimed functions of acquiring and manipulating the images and may therefore **appropriately be considered a corresponding structure for those functions.”**) Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 29 under 35 U.S.C. § 101.

Rejections under 35 U.S.C. § 103

The Examiner rejects Claims 1-5, 7-11, 13-17, and 19-23 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of U.S. Publication No. 2004/0172558¹ issued to Nakae et al. (“*Nakae*”). Applicant respectfully traverses these rejections for the reasons discussed below.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *See* M.P.E.P. § 2143.

Claim 1 recites:

A method for maintaining security of a computer system, comprising:
determining an initial system certainty value for the computer system;
providing access to a database of signatures, each signature including a
signature certainty value;
receiving data;
comparing the received data with the database of signatures;
increasing the system certainty value if the received data does not
match a signature in the database;
decreasing the system certainty value if the received data matches a
signature in the database; and
filtering the data based on the system certainty value and the signature
certainty value of a signature matching the received data.

Applicant respectfully contends that the proposed *Vaidya-Nakae* combination fails to disclose, teach, or suggest every limitation of Claim 1. The Office Action states that *Vaidya* fails to explicitly disclose the limitations “determining an initial system certainty value for the computer system,” “increasing the system certainty value if the received data does not match a signature in the database,” and “decreasing the system certainty value if the received data matches a signature in the database.” *Office Action*, pgs. 5-6. Instead, the Office Action relies on *Nakae* as disclosing or suggesting these limitations. *Office Action*, pg. 6.

¹ U.S. Publication No. 2004/0172558 is issued to Callahan et al. Applicant assumes that the intended reference is actually U.S. Publication No. 2004/0172557, issued to Nakae et al.

Nakae discloses an attack defending system, including a firewall unit and a decoy device. *Nakae*, ¶¶ 0018-0022. After receiving a data packet, the firewall unit “obtains a corresponding confidence level.” *Nakae*, ¶ 0169. This confidence level is compared “with a predetermined threshold value and, depending on its comparison result,” the received packet is either forwarded to the internal network or to a decoy device. *Nakae*, ¶ 0169. However, the confidence levels of *Nakae* correspond to the IP address of the received data packet. As such, there are “a set of combinations” of different confidence levels for corresponding IP addresses. Applicants respectfully contend that these different confidence levels for the different sources of received data fail to teach, disclose, or suggest increasing the system certainty value if the received data does not match a signature in the data base or decreasing the system certainty value if the received data matches a signature.

Additionally, the Office Action relies on paragraph 176, lines 3-4 of *Nakae* as disclosing “increasing the system certainty value” and paragraph 239, lines 1-7 of *Nakae* as disclosing “decreasing the system certainty value if the received data matches a signature in the database.” *Office Action*, pg. 6. Again, these portions disclose the confidence level associated with the source of received data, not a system certainty value. Additionally, Applicant respectfully contends that the Office Action’s reliance on *Nakae* for disclosing “decreasing the system certainty value” is misplaced. The cited paragraph explains that “the confidence management section 502 updates confidence as described for the second embodiment.” *Nakae*, ¶ 0239. This means that every time the source of received data matches an IP address, “the confidence management section 502 updates the stored confidence data such that the relevant confidence level is increased” and the data is sent to the decoy device. *See Nakae*, ¶ 0176. However, in the new portion relied upon by the Office Action, if the decoy device detects an attack, it sends an alert and “the confidence level of the source IP address included in the alert is decreased.” *Nakae*, ¶ 0239. The attack detection is determined regardless of IP address or data signatures. *See Nakae*, ¶ 0024.

For at least these reasons, Applicant respectfully contends that *Nakae* fails to disclose, teach, or suggest the limitations “determining an initial system certainty value for the computer system,” “increasing the system certainty value if the received data does not match a signature in the database,” and “decreasing the system certainty value if the received data matches a signature in the database.” Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 1.

Claims 2-5 depend from Claim 1 and incorporate all the limitations thereof. As such, Applicant respectfully requests reconsideration and allowance of Claims 2-5 for at least the same reasons as Claim 1.

Similar to Claim 1, Claims 7, 13, and 19 include elements directed to “increasing the system certainty value if the received data does not match a signature in the database” and “decreasing the system certainty value if the received data matches a signature in the database.” Thus, for at least the reasons discussed above with regard to Claim 1, Applicant respectfully requests reconsideration and allowance of Claims 7, 13, and 19. Claims 8-11 depend from Claim 7 and incorporate all the limitations thereof. Claims 14-17 depend from Claim 13 and incorporate all the limitations thereof. Claims 20-23 depend from Claim 19 and incorporate all the limitations thereof. As such, Applicant respectfully requests reconsideration and allowance of Claims 8-11, 14-17, and 20-23 be withdrawn.

The Examiner rejects Claims 6, 12, 18, and 24 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of *Nakae* and in further view of *Moran*. Applicant respectfully traverses these rejections for the reasons discussed below.

Claim 6 depends from Claim 1, and incorporates all the limitations thereof. Claim 12 depends from Claim 7 and incorporates all the limitations thereof. Claim 18 depends from Claim 13 and incorporates all the limitations thereof. Claim 24 depends from Claim 19 and incorporates all the limitations thereof. As discussed above, the proposed *Vaidya-Nakae* combination fails to teach all of the elements of Claims 1, 7, 13, and 19. *Moran* fails to overcome these deficiencies. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 6, 12, 18, and 24 for at least the same reasons as discussed above with regard to their respective base claims.

No Waiver

All of Applicant’s arguments are without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner’s additional statements. The remarks discussed by Applicant are sufficient to overcome the Examiner’s rejections.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

Applicant believes that no fee is due. However, the Commissioner is hereby authorized to charge any fee or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Luke K. Pedersen, Attorney for Applicant, at the Examiner's convenience at (214) 953-6655.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Luke K. Pedersen
Reg. No. 45,003

Date: 12-8-08

CORRESPONDENCE ADDRESS:

Customer Number:

05073